

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**TAHNISHA LAMB, on behalf of
D.L. (minor),**

Plaintiff,

-vs-

Case No. 13-C-1299

**CAROLYN W. COLVIN, Acting
Commissioner of Social Security,**

Defendant.

DECISION AND ORDER

Tanisha Lamb, on behalf of her minor son, appeals the Commissioner of Social Security's determination that disability benefits should be awarded from the date of application in 2013 going forward. Instead, Lamb argues that her son is entitled to benefits dating back to 2008. The Commissioner moves to dismiss. The Court agrees that this action is barred by the Court's previous decision which affirmed the denial of benefits commencing in 2008. *See* Case No. 12-C-1249 (E.D. Wis.); *Matrix VI, Inc. v. Am. Nat'l Bank & Trust Co.*, 649 F.3d 539, 547 (7th Cir. 2011) (discussing elements of *res judicata*). Such a dismissal would normally come under Fed. R. Civ. P. 12(c) (judgment on the pleadings), but since the Commissioner is not required to file an answer in a social security

appeal, the dismissal will be under Rule 12(b)(6). *See Carr v. Tillery*, 591 F.3d 909, 912-13 (7th Cir. 2010). Alternatively, Lamb failed to exhaust her administrative remedies before bringing this action. *Johnson v. Sullivan*, 922 F.2d 346, 348 (7th Cir. 1990).

Therefore, the Commissioner's motion to dismiss [ECF No. 17] is **GRANTED**. The Clerk of Court is directed to enter judgment accordingly.

Dated at Milwaukee, Wisconsin, this 7th day of October, 2014.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge